

1 declaratory judgment that Underwood Livestock, Inc. - a nonparty
2 entity owned by Wilson - lawfully executed its water right at the
3 time in question; and (5) mandamus ordering the BLM not to
4 interfere with the exercise of the water right at issue. The
5 defendants moved to dismiss on numerous grounds, including standing
6 and res judicata.

7 After a hearing on October 30, 2008, the court granted the
8 defendants' motion to dismiss. Judgment was entered against the
9 plaintiffs and in favor of the defendants on November 3, 2008.
10 Plaintiffs did not file an appeal.

11 On May 6, 2011, Wilson filed his motion pursuant to Federal
12 Rule of Civil Procedure 60(b) (#63). Under Rule 60(b), "the court
13 may relieve a party or its legal representative from a final
14 judgment, order, or proceeding for the following reasons:

- 15 (1) mistake, inadvertence, surprise, or excusable
16 neglect;
- 17 (2) newly discovered evidence that, with reasonable
18 diligence, could not have been discovered in time
19 to move for a new trial under Rule 59(b);
- 20 (3) fraud . . ., misrepresentation, or misconduct by
21 an opposing party;
- 22 (4) the judgment is void;
- 23 (5) the judgment has been satisfied, released or
24 discharged; it is based on an earlier judgment
25 that has been reversed or vacated; or applying it
26 prospectively is no longer equitable; or
- 27 (6) any other reason that justifies relief.

28 Wilson brings his motion under Rule 60(b)(4). (Wilson Mots.
1). Although Wilson states that his motion is also brought under
Rule 60(b)(6), he argues only that the judgment is void. He does
not assert any other basis for vacating the judgment in this case.

1 Accordingly, to the extent Wilson brings his motion under Rule
2 60(b)(6), the motion is denied.

3 Wilson is not arguing that the judgment entered by the court
4 in this action is void. Rather, he is arguing that the 2001 IBLA
5 judgment, which was the subject of this action, is void. (Wilson
6 Reply 4:6-8) (stating that his motion is "not an attack on any
7 proceeding or any attack on the subject matter of this Court, but
8 is a collateral attack on a Void Judgment under Rule 60(b)(4) of
9 the IBLA decision").

10 Despite Wilson's argument that this court may vacate the IBLA
11 judgment pursuant to Rule 60(b) and the Administrative Procedures
12 Act ("APA"), vacating the IBLA judgment is exactly what Wilson
13 sought when he filed this action. In essence, Wilson is rearguing
14 the merits of his original complaint. A Rule 60(b) motion "is not
15 a substitute for a timely appeal," and a judgment is not void
16 "simply because it may have been erroneous." *United Student Aid*
17 *Funds, Inc. v. Espinosa*, - U.S. -, 130 S. Ct. 1367, 1377 (2010).
18 Neither the APA nor Rule 60(b) empowers the court to revisit the
19 merits of this case or the legitimacy of the IBLA decision.
20 Accordingly, Wilson's motion to vacate the IBLA judgment (#28) is
21 denied.

22 Although Wilson explicitly states he is not attacking the
23 judgment of this court, to the extent his motion may be read as
24 doing so, the motion is denied. "Rule 60(b)(4) applies only in the
25 rare instance where a judgment is premised either on a certain type
26 of jurisdictional error or on a violation of due process that
27 deprives a party of notice or the opportunity to be heard." *Id.*
28 Wilson does not argue that the court lacked jurisdiction or that it

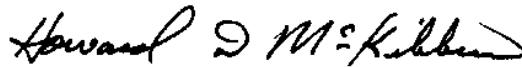
1 deprived him of due process of law. In fact, Wilson himself
2 invoked this court's jurisdiction under the APA, and he was heard
3 on his claims. There is thus no basis for declaring void the
4 judgment in this action.

5 Because there is no basis for vacating the court's judgment,
6 there is no basis for reopening this case and requiring defendants
7 to appear at a show cause hearing. Accordingly, Wilson's motion
8 for an order to conduct a show cause hearing (#29) is also denied.

9 In accordance with the foregoing, Wilson's motions to vacate a
10 void judgment (#28) and for an order to show cause hearing (#29)
11 are hereby **DENIED**.

12 IT IS SO ORDERED.

13 DATED: This 6th day of June, 2011.

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15 UNITED STATES DISTRICT JUDGE
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